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| EXAMINER |
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FLOOD, MICHELE C

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| ART UNIT | PAPER NUMBER |
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1655

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02/03/2011

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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| Office Action Summary | Application No. 10/599,663 | Applicant(s) MILJKOVIC, DUSAN | |
| | Examiner MICHELE FLOOD | Art Unit 1655 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 November 2010.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3,6,8-15,17,18 and 20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3,6,8-15,17,18 and 20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Acknowledgment is made of the receipt and entry of the amendment filed on November 8, 2010 with the cancellation of Claims 4, 5, 7 and 16.

Claims 1, 3, 6, 8-15, 17, 18 and 20 are under examination.

Response to Arguments

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1, 3, 6 and 8-14, as amended, are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claims contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor, at the time the application was filed, had possession of the claimed invention. Herein, the claims are rejected under 35 U.S.C. § 112, first paragraph, as failing to provide prior support or antecedent basis for the language “whole extract of primarily red or almost ripe dried Coffea spec. (coffee) cherries having a mycotoxin level of less than 20 ppb (part-per-billion) for total aflatoxins, less than 10 ppb for total ochratoxins, and less than 5 ppb for total fumonisins”, as set forth in Claim 1, lines 2-7. Newly applied as necessitated by amendment.

The claims, as set forth in the amendment filed on November 8, 2010, now recite " Applicant claims a cosmetic composition comprising a *Coffea spec.* (coffee cherry) whole extract of primarily red or almost ripe dried *Coffea spec.* (coffee) cherries having a mycotoxin level of less than 20 ppb (part-per-billion) for total aflatoxins, less than 10 ppb for total ochratoxins, and less than 5 ppb for total fumonisins." However, the specification as originally filed only provides for the making of cosmetic compositions prepared from primarily red or almost ripe coffee dried coffee cherries having a mycotoxin level of less than 20 ppb (part-per-billion) for total aflatoxins, less than 5 ppb for total ochratoxins, and less than 5 ppm for total fumonisins.

Insertion of the above mentioned claim limitation has no support in the as-filed specification. Therefore, insertion of the limitation is a new concept because it neither has literal support in the as-filed specification by way of generic disclosure, nor are there specific examples of the newly limited genus which would show possession of a cosmetic composition having the claim-designated levels of mycotoxins, specifically with regard to less than 10 ppb for total ochratoxins, as the specification discloses using only primarily red or almost ripe dried coffee cherries having a mycotoxin level of less than 5 ppb ochratoxins. This is a matter of written description, not a question of what one of skill in the art would or would not have known. The material within the four corners of the as-filed specification must lead to the generic concept. If it does not, the material is new matter. Declarations and new references cannot demonstrate the possession of a concept after the fact. Thus, the insertion of the above mentioned claim limitations is considered to be the insertion of new matter for the above reasons.

As the above mentioned claim limitation could not be found in the present specification, the recitation of the claim limitation is deemed new matter; and, therefore it must be omitted from the claim language, unless Applicant can particularly point to the specification for literal support.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1, 3 6, 8-10 and 12-14, as amended, are rejected under 35 U.S.C. 103(a) as being unpatentable over Sceopul (N or U) in view of Suzuki et al. (V), Suzuki (W), Clifford (X), and further in view of Stuckler et al. (O) and Pugliese (A*), Batista et al. (U1), Frank (X1), Helferich (W1), Romani et al. (X), Codex Committee on Food Additives and Contaminants (V2 or CCFAC), FDA (U2) and Bucheli et al. (W2). Newly applied as necessitated by amendment.

Applicant claims a cosmetic composition comprising a *Coffea spec.* (coffee cherry) whole extract of primarily red or almost ripe dried *Coffea spec.* (coffee) cherries having a mycotoxin level of less than 20 ppb (part-per-billion) for total aflatoxins, less than 10 ppb for total ochratoxins, and less than 5 ppm for total fumonisins. Applicant further claims the cosmetic composition of claim 1 wherein the *Coffea spec.* (coffee) cherries are quick-dried *Coffea spec.* (coffee) cherries. Applicant further claims the cosmetic composition of claim 1 wherein the *Coffea spec.* (coffee) cherry whole extract is at least one of an aqueous extract and an alcoholic extract. Applicant further claims the cosmetic composition of claim 1 wherein the whole extract comprises least two classes of compounds selected from the group consisting of coffee acids, coffee polyphenols, essential monosaccharides, coffee mucilage polysaccharides, and trigonelline, and wherein the at least two classes of compounds are present in the whole extract in an amount of at least 1 wt.% of the extract. Applicant further claims the cosmetic composition of claim 8 wherein the at least two classes of compounds are present in the whole extract in an amount of at least 5 wt, % of the cosmetic composition; and wherein the coffee acids include a compound selected from the group consisting of chlorogenic acid, ferulic acid, and caffeic acid. Applicant further claims the composition of claim 1 wherein the composition is formulated as one of a shampoo, a lotion, a cream, a balm, and an ointment; and, further comprising an information associated with the composition that the composition comprises the *Coffea spec.* (coffee) cherry whole extract; further comprising an information associated with the composition that the composition has an effect selected from the group consisting of an

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antioxidant effect, an anti-inflammatory effect, a UV (ultraviolet)-protective effect, an antimutagenic effect, a chemoprotective effect, a scar reducing effect, a skin-lightening effect, a moisturizing effect, a wrinkle reduction effect, and an antibacterial effect.

Sceopul teaches a cosmetic composition comprising a *Coffea spec.*(coffee) cherry whole extract prepared from whole, sub-ripe coffee cherry, *i.e.*, the entire green fruit of coffee (*Coffea arabica*), which is harvested before the fruit is completely mature. See page 3, lines 1-6 of translated document. Sceopul teaches, "Extracts of flowers and green fruit of the coffee plant obtained as follows: Flowers and fruit are washed with cold water and crushed in double cylinder extractors or electric grinders, giving creamy extracts varying in colour from yellow to grey-blue. Extract is purified and stabilizes with known preservatives and may be lyophilized to give fine stable powder." See abstract. As Sceopul teaches that whole, sub-ripe coffee cherry is used to prepare the extracts for cosmetic preparations, each of a bean of the coffee cherry, a pulp of the coffee cherry, a mucilage of a coffee cherry and a hull of the coffee cherry is inherent to the reference composition preparations; and, thereby, it is also considered that at least two classes of compounds selected from the group consisting of coffee acids, coffee polyphenols, essential monosaccharides and coffee mucilage polysaccharides are inherent to the reference composition. On page 1, second Column, line 36 to page 2, line 7, Sceopul further teaches that alcohol extracts of cherry coffee extracts are known to comprise sugars (9.5%), caffeic acid, tannic acids (8.4%), *etc.* The extracts are used in the making of shampoo, lotion, cream, balm, and sunscreen. See page 1, Column 1, second paragraph; and examples. Sceopul also teaches that the extract comprises

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caffeic acid (a coffee acid considered in the art as a double salt of caffeine) and cafetannic acid (a coffee polyphenols, also known in the art as chlorogenic acid). The Sceopul' patent provides information associated with the compositions that the compositions protect the skin and hair from extraneous influences, and exhibit astringent, vasomotive, tonifying effect on cutaneous tissue and moisturizing activity on skin and moisturizing and protective effect of keratin of the hair. The Sceopul' patent provides information associated with the compositions that the compositions protect the skin and hair from extraneous influences, and exhibit astringent, vasomotive, tonifying effect on cutaneous tissue and moisturizing activity on skin and moisturizing and protective effect of keratin of the hair.

The teachings of Sceopul are set forth above. While Sceopul teaches that the chemicals comprising an alcohol extract of green coffee cherries; and, while Sceopul teaches cosmetic compositions comprising whole extracts of coffee cherries, Sceopul does not specifically teach using an aqueous or alcohol solvent in the making of the whole coffee cherry extracts for use in the reference composition. Thus, Sceopul teaches the instantly claimed cosmetic except for wherein the cosmetic composition is prepared from primarily red or almost red quick-dried coffee cherries having a mycotoxin level of less than 20 ppb for total aflatoxins, less than 10 ppb for total ochratoxins, and less than 5 ppm for total fumonisins; and, wherein the *Coffea spec.* (coffee) cherry whole extract is at least one of an aqueous extract and an alcohol extract. However, it would have been obvious to one of ordinary skill in the art to replace the sub-ripe cherry used in the making of the composition taught by Sceopul

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with a primarily red or almost ripe quick-dried coffee having the claim-designated level of mycotoxins and to use at least one of an aqueous or alcohol as a solvent to provide the claimed cosmetic composition because at the time of the invention it was known in the art that aqueous or alcohol extracts of quick-dried primarily red or almost ripe coffee cherries contain higher amounts of therapeutic phytochemicals, when compared to sub-ripe coffee cherries; and, that quick-drying of coffee cherries was useful in lowering suspected levels of mycotoxin in coffee fruit known to be harmful to the health of humans and animals. Firstly, Suzuki (V) teaches a method of extracting caffeine, theobromine and theophylline from quick-dried coffee cherries (*Coffea arabica*). For example, on page 67 under “2.1 Harvesting fruits”, Suzuki teaches (V), “Fruits were detached at various stages ranging from 10 days after petal all to maturity (about 8 months) dried at 100°C for 1.5 h and then at 80°C for 6h, and placed in a desiccator overnight. Suzuki further teaches extracting the quick-dried coffee cherries using water as a solvent and chloroform as solvents and analyzing the contents of the extract (containing caffeine, theobromine and theophylline). In Table 1, Suzuki (x) shows that appreciable levels of caffeine (7500 $\mu\text{g g}^{-1}$ dry wt.), theobromine (59 $\mu\text{g g}^{-1}$ dry wt.) and theophylline (28 $\mu\text{g g}^{-1}$ dry wt.) were observed in coffee fruits (yellow-red coffee cherry) at 5-6 months of bean growth maturity, while at 4 months (green coffee cherry) only caffeine (7900 $\mu\text{g g}^{-1}$ dry wt.) and theobromine (55 $\mu\text{g g}^{-1}$ dry wt.), while decreasing levels of caffeine were observed in coffee fruits at 7-8 months of bean growth maturity. In another instance, Suzuki (X) shows the distribution of caffeine, theobromine and theophylline between seed and pericarp of *Coffea arabica* fruits at different stages of

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development. See Table 3. Suzuki teaches, "The pattern of growth of the *Coffea arabica* fruit was almost identical to that previously reported [completed citation omitted; Suzuki and Waller, 1984a). Table 3 shows the distribution of caffeine, theobromine and theophylline, between pericarp and seed of *Coffea arabica* fruits. Caffeine and theobromine were found in both seed and pericarp but theophylline in the pericarp of the ripened (red) fruits only." Thus, Suzuki shows that lower amounts of caffeine, theobromine and theophylline are present in the pericarp and seeds of immature green fruits of *Coffea arabica* with increasing amounts of the alkaloid compounds are observed in the plant materials as it ripens to a red color. The amounts of the compounds drastically decreased as the color changed to black in the latter stages of fruit maturation. In another example, Clifford reports the findings of a study assessing the change, with coffee fruit maturity, in the content of chlorogenic acids, caffeine and trigonelline in freeze-dried coffee beans of four different *Coffea sp.* Clifford uses water as solvent to extract the compounds from the coffee cherry portion. As illustrated in Figures 2A-D, the most striking change for each type of bean was the pronounced sigmoidal increase in the total accumulation of caffeoylquinic acid in parallel with the total dry matter gain, and representing between 5% and 12% thereof, whereas there was a linear increase of caffeine and trigonelline on a mass per 100 bean basis. Since the primarily red or almost ripe quick-dried aqueous or alcohol extracts of Suzuki (V or W) and Clifford yielded high amounts of caffetannic acids, caffeine, chlorogenic acid, as well as trigonelline taught by Stuckler as being useful in the making of cosmetics (e.g., lotions or shampoos) for nail, skin and hair care and for reducing hair loss and for

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stimulating hair growth; and, caffeine, theophylline and theobromine taught by Pugliese as being useful in the making of cosmetic compositions for reducing human cellulite and reduction of other fatty tissues, one of ordinary skill in the art would have had a reasonable expectation of success to replace the subripe coffee cherries comprising the Sceopul' cosmetic composition with the claim-designated coffee cherry extracts to provide the claimed invention because to do so would provide for the making of a cosmetic composition having increased amounts of caffeine, caffeic acids, and chlorogenic taught by Sceopul as having therapeutic cosmetic effects; as, well as additional phytochemicals known in the art to be beneficial in the making of cosmetics made evident by the teachings of Stuckler and Pugliese, This reasonable expectation of success would have motivated the artisan of ordinary skill to modify the Sceopul' cosmetic because to do would provide for the making of a cosmetic composition having broader therapeutic effect.

The combined teachings of Sceopul, Suzuki (V or W) and Clifford do not specifically teach using primarily red or almost ripe dried or quick-dried coffee cherries having a mycotoxin level of less than 20 ppb for total aflatoxins, less than 10 ppb for total ochratoxins, and less than 5 ppm for total fumonisins. However, use of the claim designated ingredients in the making of the cosmetic composition taught by the combined teachings to provide the claimed product would have been obvious to one of ordinary skill in the art because at the time the invention was made the following was well-known in the art of botany, mycology, and the coffee industry:

Firstly, prior studies showed that *Aspergillus*, *Penicillium* and *Fusarium* are natural coffee contaminants having the potential to produce aflatoxins, ochratoxins, and fumonisins which are detrimental to the quality and safety of the final product. See Batista, for instance, wherein Batista clearly teaches, “Like other crops, coffee cherries and beans are subjected to contamination and consequent colonization by microorganisms during different phases of development, harvesting, transport and storage. Microbial action detrimental to the quality and safety of the final product will depend on environmental conditions as well as crop and product management. Studies on the microbiology of coffee cherries and beans have shown the main toxigenic fungal genera (*Aspergillus*, *Penicillium* and *Fusarium*) are natural coffee contaminants, and are present from the field to the warehouse”, on page 293 bridging page 294, line 3 [citations omitted]. While the teachings of Frank are primarily concerned with the occurrence of ochratoxins in coffee processing from green coffee beans obtained from ripe cherries, Frank also teaches, “Lastly, a fresh cherry sample can be manipulated in the laboratory to assess the consequences of hypothetical circumstances such as a heavy superficial contamination of a particular fungus or removal of the natural external microbial flora”, on page 6, third paragraph. Interestingly, Frank further teaches, “(n) Outer fruit tissues more frequently contain *A. ochraceus* and OTA [ochratoxin] than beans but the concentration of the toxin is not always greater in these tissues than in the beans”, on page 7. Of further interest is that Frank teaches that at harvest aspergilli, such as *A. ochraceus* are sometimes present but appear to be uncommon in coffee at harvest. Finally, Frank further teaches that growth of *A. ochraceus* (and other

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species with similar physiological properties) and OTA production is restricted to a fairly narrow window between A_w values of 0.94 and 0.80. Like Frank, Helferich teaches that aflatoxins are contaminants of agricultural crops, such as coffee. On page 108, second paragraph, Helferich teaches, "Aflatoxins have become generally accepted to be poisonous and deleterious, and are now widely regulated in foods. In the U.S., the Food and Drug Administration (FDA) regulates feed and food containing aflatoxins at regulatory levels of 20 ppb of AFB₁ for human foods and selected animal feed". Helferich further teaches that ochratoxins are toxins found in coffee; and, that heat treatment at 250°C for 40 minutes provided a 76% reduction of the toxin in white flour. See page 108-109, under "*Ochratoxin A*". Furthermore, Romani teaches that international statutory limits for ochratoxin A (OTA) as regulated by Italy are 8 ppb for green coffee and 4 ppb for final product; 10 ppb as regulated by Finland; and 20 ppb as regulated by Greece. While the teachings of Codex Committee on Food Additives and Contaminants (CCFAC), with regard to fumonisins are predominantly directed to its occurrence in cereal grains, CCFAC teaches that *Fusarium* growth and mycotoxin production may continue to grow in agricultural crops if they are not sufficiently dried and that when the content of small grain is reduced to approximately 15% growth of *Fusarium* species will stop. Furthermore, the FDA teaches, "The recommended maximum levels for fumonisins in corn and corn products intended for human consumption (Table 1) are based on concerns associated with hazards shown primarily by animal studies. However, based on available information on the occurrence of fumonisins, FDA believes that typical fumonisin levels found in corn and corn products

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intended for human consumption are much lower than the recommended level. For example, Table 1 indicates levels of 2-4 ppb of fumonisins in corn are acceptable levels for human consumption. Finally, Bucheli demonstrates that reduction of ochratoxin in coffee plant materials of coffee cherry can be achieved by properly drying whole fruit of *Coffea sp.* under optimal conditions and within a short period of time after harvesting. Bucheli also teaches that the concentration of ochratoxins in coffee cherries is directly related to the coffee cherry maturity. See Table 3 and Table 4. Given the above combined teachings as a whole, at the time of the invention the artisan of ordinary skill would have been motivated to use primarily red or almost ripe coffee quick-dried coffee cherries having a mycotoxin level having a mycotoxin level of less than 20 ppb for total aflatoxins, less than 10 ppb for total ochratoxins, and less than 5 ppm for total fumonisins in the making of the cosmetic composition taught the combined teachings of Sceopul, Suzuki (V or W) and Clifford to provide the claimed cosmetic composition because it would address the concern of the international community for the occurrence of mycotoxins in products prepared from coffee cherry intended for human or animal consumption since it was known that aflatoxins, ochratoxins and fumonisins pose risk to the health of humans and animals and would meet the requirements for limited levels of mycotoxins in food crops as regulated by agencies such as the FDA.

With respect to the claimed information associated with the claim-designated product, please note that it is legally well established that information of a known composition does not lend patentable distinction to the composition, *per se*. That is, a prior art product, packaged with printed instructions to show its new use, is not

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patentable - - see, *e.g.*, *In re Haller*, 73 USPQ 403 (CCPA 1947). Accordingly, this claim limitation (*i.e.*, information associated with the composition that the composition comprises has particular functional effects).

Accordingly, the claimed invention was *prima facie* obvious to one of ordinary skill in the art at the time the invention was made, especially in the absence of to the contrary.

Claims 1, 3, 6 and 8-14, as amended, are rejected under 35 U.S.C. 103(a) as being unpatentable over Sceopul (N or U) in view of Suzuki et al. (V), Suzuki (W), Clifford (X), Fischer et al. (X2) and Coleman et al. (U3); further in view of Stuckler et al. (O) and Pugliese et al. (A*), Pineau et al. (B*); and, further in view of Batista et al. (U1), Frank (V1), Helferich (W1), Romani et al. (X1), Codex Committee on Food Additives and Contaminants (V2 or CCFAC), FDA (U2) and Bucheli et al. (W2). Newly applied as necessitated by amendment.

Applicant's claimed invention of Claims 1, 3 6, 8-10 and 12-14 was set forth above. Applicant further claims the cosmetic composition of claim 8 wherein the essential monosaccharides include a compound selected from the group consisting of arabinose, fucose, mannose, xylose and galactose.

Sceopul teaches a cosmetic composition comprising a *Coffea spec.*(coffee) cherry whole extract prepared from whole, sub-ripe coffee cherry, *i.e.*, the entire green fruit of coffee (*Coffea arabica*), which is harvested before the fruit is completely mature.

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See page 3, lines 1-6 of translated document. Sceopul teaches, "Extracts of flowers and green fruit of the coffee plant obtained as follows: Flowers and fruit are washed with cold water and crushed in double cylinder extractors or electric grinders, giving creamy extracts varying in colour from yellow to grey-blue. Extract is purified and stabilizes with known preservatives and may be lyophilized to give fine stable powder." See abstract.

As Sceopul teaches that whole, sub-ripe coffee cherry is used to prepare the extracts for cosmetic preparations, each of a bean of the coffee cherry, a pulp of the coffee cherry, a mucilage of a coffee cherry and a hull of the coffee cherry is inherent to the reference composition preparations; and, thereby, it is also considered that at least two classes of compounds selected from the group consisting of coffee acids, coffee polyphenols, essential monosaccharides and coffee mucilage polysaccharides are inherent to the reference composition. On page 1, second Column, line 36 to page 2, line 7, Sceopul further teaches that alcohol extracts of cherry coffee extracts are known to comprise sugars (9.5%), caffeic acid, tannic acids (8.4%), *etc.* The extracts are used in the making of shampoo, lotion, cream, balm, and sunscreen. See page 1, Column 1, second paragraph; and examples. Sceopul also teaches that the extract comprises caffeic acid (a coffee acid considered in the art as a double salt of caffeine) and cafetannic acid (a coffee polyphenols, also known in the art as chlorogenic acid). The Sceopul' patent provides information associated with the compositions that the compositions protect the skin and hair from extraneous influences, and exhibit astringent, vasomotive, tonifying effect on cutaneous tissue and moisturizing activity on skin and moisturizing and protective effect of keratin of the hair. The Sceopul' patent

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provides information associated with the compositions that the compositions protect the skin and hair from extraneous influences, and exhibit astringent, vasomotive, tonifying effect on cutaneous tissue and moisturizing activity on skin and moisturizing and protective effect of keratin of the hair. The Sceopul' patent provides information associated with the compositions that the compositions protect the skin and hair from extraneous influences, and exhibit astringent, vasomotive, tonifying effect on cutaneous tissue and moisturizing activity on skin and moisturizing and protective effect of keratin of the hair.

The teachings of Sceopul are set forth above. While Sceopul teaches that the chemicals comprising an alcohol extract of green coffee cherries; and, while Sceopul teaches cosmetic compositions comprising whole extracts of coffee cherries, Sceopul does not specifically teach using an aqueous or alcohol solvent in the making of the whole coffee cherry extracts for use in the reference composition. Thus, Sceopul teaches the instantly claimed cosmetic except for wherein the cosmetic composition is prepared from primarily red or almost red quick-dried coffee cherries having a mycotoxin level of less than 20 ppb for total aflatoxins, less than 10 ppb for total ochratoxins, and less than 5 ppm for total fumonisins; and, wherein the *Coffea spec.* (coffee) cherry whole extract is at least one of an aqueous extract and an alcohol extract. However, it would have been obvious to one of ordinary skill in the art to replace the sub-ripe cherry used in the making of the composition taught by Sceopul with a primarily red or almost ripe quick-dried coffee having the claim-designated level of mycotoxins and to use at least one of an aqueous or alcohol as a solvent to provide

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the claimed cosmetic composition because at the time of the invention it was known in the art that aqueous or alcohol extracts of quick-dried primarily red or almost ripe coffee cherries contain higher amounts of therapeutic phytochemicals, when compared to sub-ripe coffee cherries; and, that quick-drying of coffee cherries was useful in lowering suspected levels of mycotoxin in coffee fruit known to be harmful to the health of humans and animals. Firstly, Suzuki (V) teaches a method of extracting caffeine, theobromine and theophylline from quick-dried coffee cherries (*Coffea arabica*). For example, on page 67 under "2.1 Harvesting fruits", Suzuki teaches (V), "Fruits were detached at various stages ranging from 10 days after petal all to maturity (about 8 months) dried at 100°C for 1.5 h and then at 80°C for 6h, and placed in a desiccator overnight. Suzuki further teaches extracting the quick-dried coffee cherries using water as a solvent and chloroform as solvents and analyzing the contents of the extract (containing caffeine, theobromine and theophylline). In Table 1, Suzuki (W) shows that appreciable levels of caffeine (7500 $\mu\text{g g}^{-1}$ dry wt.), theobromine (59 $\mu\text{g g}^{-1}$ dry wt.) and theophylline (28 $\mu\text{g g}^{-1}$ dry wt.) were observed in coffee fruits (yellow-red coffee cherry) at 5-6 months of bean growth maturity, while at 4 months (green coffee cherry) only caffeine (7900 $\mu\text{g g}^{-1}$ dry wt.) and theobromine (55 $\mu\text{g g}^{-1}$ dry wt.), while decreasing levels of caffeine were observed in coffee fruits at 7-8 months of bean growth maturity. In another instance, Suzuki (X) shows the distribution of caffeine, theobromine and theophylline between seed and pericarp of *Coffea arabica* fruits at different stages of development. See Table 3. Suzuki teaches, "The pattern of growth of the *Coffea arabica* fruit was almost identical to that previously reported [completed citation omitted;

Suzuki and Waller, 1984a). Table 3 shows the distribution of caffeine, theobromine and theophylline, between pericarp and seed of *Coffea arabica* fruits. Caffeine and theobromine were found in both seed and pericarp but theophylline in the pericarp of the ripened (red) fruits only.” Thus, Suzuki shows that lower amounts of caffeine, theobromine and theophylline are present in the pericarp and seeds of immature green fruits of *Coffea arabica* with increasing amounts of the alkaloid compounds are observed in the plant materials as it ripens to a red color. The amounts of the compounds drastically decreased as the color changed to black in the latter stages of fruit maturation. In another example, Clifford reports the findings of a study assessing the change, with coffee fruit maturity, in the content of chlorogenic acids, caffeine and trigonelline in freeze-dried coffee beans of four different *Coffea sp.* Clifford uses water as solvent to extract the compounds from the coffee cherry portion. As illustrated in Figures 2A-D, the most striking change for each type of bean was the pronounced sigmoidal increase in the total accumulation of caffeoylquinic acid in parallel with the total dry matter gain, and representing between 5% and 12% thereof, whereas there was a linear increase of caffeine and trigonelline on a mass per 100 bean basis. Secondly, Fischer teaches harvesting coffee cherries (*Coffea Arabica*) at full maturity and extracting the beans with water or alcohol to obtain extracts comprising fucose, rhamnose, arabinose, galactose, glucose, xylose, and mannose (55.8%) in Table 1, and galactomannan (see Table 4). In another instance, Coleman teaches water and ethanol extracts of crude coffee cherry mucilage from ripe coffee cherries comprise galacturonic acid fraction comprising arabinose, galactose, xylose and rhamnose.

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Since the primarily red or almost ripe quick-dried aqueous or alcohol extracts of Suzuki (V or W) and Clifford yielded high amounts of caffetannic acids, caffeine, chlorogenic acid, as well as trigonelline taught by Stuckler as being useful in the making of cosmetics (e.g., lotions or shampoos) for nail, skin and hair care and for reducing hair loss and for stimulating hair growth; and, caffeine, theophylline and theobromine taught by Pugliese as being useful in the making of cosmetic compositions for reducing human cellulite and reduction of other fatty tissues; and, since the aqueous or alcohol extracts of Fischer and Coleman yielded high amounts of essential monosaccharides from dried coffee cherries harvested at full maturity or ripened state taught by Pineau as being useful in the making of skin cosmetic compositions for promoting desquamation of the skin of a mammalian organism in need of such treatment and/or to stimulate epidermal renewal and/or inhibit intrinsic and/or extrinsic cutaneous aging, one of ordinary skill in the art would have had a reasonable expectation of success to replace the sub-ripe coffee cherries comprising the Sceopul' cosmetic composition with the claim-designated coffee cherry extracts to provide the claimed invention because to do so would provide for the making of a cosmetic composition having increased amounts of caffeine, caffeic acids, and chlorogenic taught by Sceopul as having therapeutic cosmetic effects; as, well as additional phytochemicals, specifically trigonelline, xanthines and essential monosaccharides, known in the art to be beneficial in the making of cosmetics made evident by the teachings of Stuckler and Pugliese and Pineau, This reasonable expectation of success would have motivated the artisan of ordinary skill to modify the

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Sceopul' cosmetic because to do would provide for the making of a cosmetic composition having broader therapeutic effect.

The combined teachings of Sceopul, Suzuki (V or W), Clifford, Fischer and Coleman do not specifically teach using primarily red or almost ripe dried or quick-dried coffee cherries having a mycotoxin level of less than 20 ppb for total aflatoxins, less than 10 ppb for total ochratoxins, and less than 5 ppm for total fumonisins. However, use of the claim designated ingredients in the making of the cosmetic composition taught by the combined teachings to provide the claimed product would have been obvious to one of ordinary skill in the art because at the time the invention was made the following was well-known in the art of botany, mycology, and the coffee industry:

Firstly, prior studies showed that *Aspergillus*, *Penicillium* and *Fusarium* are natural coffee contaminants having the potential to produce aflatoxins, ochratoxins, and fumonisins which are detrimental to the quality and safety of the final product. See Batista, for instance, wherein Batista clearly teaches, "Like other crops, coffee cherries and beans are subjected to contamination and consequent colonization by microorganisms during different phases of development, harvesting, transport and storage. Microbial action detrimental to the quality and safety of the final product will depend on environmental conditions as well as crop and product management. Studies on the microbiology of coffee cherries and beans have shown the main toxigenic fungal genera (*Aspergillus*, *Penicillium* and *Fusarium*) are natural coffee contaminants, and are present from the field to the warehouse", on page 293 bridging page 294, line 3 [citations omitted]. While the teachings of Frank are primarily concerned with the

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occurrence of ochratoxins in coffee processing from green coffee beans obtained from ripe cherries, Frank also teaches, “Lastly, a fresh cherry sample can be manipulated in the laboratory to assess the consequences of hypothetical circumstances such as a heavy superficial contamination of a particular fungus or removal of the natural external microbial flora”, on page 6, third paragraph. Interestingly, Frank further teaches, “(n) Outer fruit tissues more frequently contain *A. ochraceus* and OTA [ochratoxin] than beans but the concentration of the toxin is not always greater in these tissues than in the beans”, on page 7. Of further interest is that Frank teaches that at harvest aspergilli, such as *A. ochraceus* are sometimes present but appear to be uncommon in coffee at harvest. Finally, Frank further teaches that growth of *A. ochraceus* (and other species with similar physiological properties) and OTA production is restricted to a fairly narrow window between A_w values of 0.94 and 0.80. Like Frank, Helferich teaches that aflatoxins are contaminants of agricultural crops, such as coffee. On page 108, second paragraph, Helferich teaches, “Aflatoxins have become generally accepted to be poisonous and deleterious, and are now widely regulated in foods. In the U.S., the Food and Drug Administration (FDA) regulates feed and food containing aflatoxins at regulatory levels of 20 ppb of AFB₁ for human foods and selected animal feed”. Helferich further teaches that ochratoxins are toxins found in coffee; and, that heat treatment at 250°C for 40 minutes provided a 76% reduction of the toxin in white flour. See page 108-109, under “*Ochratoxin A*”. Furthermore, Romani teaches that international statutory limits for ochratoxin A (OTA) as regulated by Italy are 8 ppb for green coffee and 4 ppb for final product; 10 ppb as regulated by Finland; and 20 ppb as

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regulated by Greece. While the teachings of Codex Committee on Food Additives and Contaminants (CCFAC), with regard to fumonisins are predominantly directed to its occurrence in cereal grains, CCFAC teaches that *Fusarium* growth and mycotoxin production may continue to grow in agricultural crops if they are not sufficiently dried and that when the content of small grain is reduced to approximately 15% growth of *Fusarium* species will stop. Furthermore, the FDA teaches, "The recommended maximum levels for fumonisins in corn and corn products intended for human consumption (Table 1) are based on concerns associated with hazards shown primarily by animal studies. However, based on available information on the occurrence of fumonisins, FDA believes that typical fumonisin levels found in corn and corn products intended for human consumption are much lower than the recommended level. For example, Table 1 indicates levels of 2-4 ppb of fumonisins in corn are acceptable levels for human consumption. Finally, Bucheli demonstrates that reduction of ochratoxin in coffee plant materials of coffee cherry can be achieved by properly drying whole fruit of *Coffea sp.* under optimal conditions and within a short period of time after harvesting. Bucheli also teaches that the concentration of ochratoxins in coffee cherries is directly related to the coffee cherry maturity. See Table 3 and Table 4. Given the above combined teachings as a whole, the artisan of ordinary skill would have been motivated to use primarily red or almost ripe coffee quick-dried coffee cherries having a mycotoxin level having a mycotoxin level of less than 20 ppb for total aflatoxins, less than 10 ppb for total ochratoxins, and less than 5 ppm for total fumonisins in the making of the cosmetic composition taught by the combined teachings of Sceopul, Suzuki (V or

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W), Clifford, Fisher and Coleman to provide the claimed cosmetic composition because it would address the concern of the international community for the occurrence of mycotoxins in products prepared from coffee cherry intended for human or animal consumption since it was known that aflatoxins, ochratoxins and fumonisins pose risk to the health of humans and animals and would meet the requirements for limited levels of mycotoxins in food crops as regulated by agencies such as the FDA.

With respect to the claimed information associated with the claim-designated product, please note that it is legally well established that information of a known composition does not lend patentable distinction to the composition, *per se*. That is, a prior art product, packaged with printed instructions to show its new use, is not patentable - - see, *e.g.*, *In re Haller*, 73 USPQ 403 (CCPA 1947). Accordingly, this claim limitation (*i.e.*, information associated with the composition that the composition comprises has particular functional effects).

Accordingly, the claimed invention was *prima facie* obvious to one of ordinary skill in the art at the time the invention was made, especially in the absence of to the contrary.

Claims 15, 17, 18 and 20, as amended, are rejected under 35 U.S.C. 103(a) as being unpatentable over Sceopul (N or U) in view of Suzuki et al. (V), Suzuki (W), Clifford (X) and The Free Dictionary by Farlex (V3). Newly applied as necessitated by amendment.

Applicant claims a method of marketing a cosmetic formulation comprising a step of providing the cosmetic formulation and a further step of providing an information that the formulation comprises a *Coffea spec.* (coffee cherry) whole extract of primarily red or almost ripe dried *Coffea Spec.* (coffee) cherries. Applicant further claims the method of claim 15 wherein the information is associated with the cosmetic formulation.

Applicant further claims the method of claim 17 wherein the information is printed on at least one of a container containing the cosmetic formulation and a package containing the container. Applicant further claims the method of claim 15 wherein the whole extract is at least one an aqueous extract and an alcoholic extract.

Sceopul teaches a method of providing a cosmetic composition comprising a *Coffea spec.*(coffee) cherry whole extract prepared from whole, sub-ripe coffee cherry, *i.e.*, the entire green fruit of coffee (*Coffea arabica*), which is harvested before the fruit is completely mature. See page 3, lines 1-6 of translated document. Sceopul teaches, "Extracts of flowers and green fruit of the coffee plant obtained as follows: Flowers and fruit are washed with cold water and crushed in double cylinder extractors or electric grinders, giving creamy extracts varying in colour from yellow to grey-blue. Extract is purified and stabilizes with known preservatives and may be lyophilized to give fine stable powder." See abstract. As Sceopul teaches that whole, sub-ripe coffee cherry is used to prepare the extracts for cosmetic preparations, each of a bean of the coffee cherry, a pulp of the coffee cherry, a mucilage of a coffee cherry and a hull of the coffee cherry is inherent to the reference composition preparations; and, thereby, it is also considered that at least two classes of compounds selected from the group consisting of

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coffee acids, coffee polyphenols, essential monosaccharides and coffee mucilage polysaccharides are inherent to the reference composition. On page 1, second Column, line 36 to page 2, line 7, Sceopul further teaches that alcohol extracts of cherry coffee extracts are known to comprise sugars (9.5%), caffeic acid, tannic acids (8.4%), *etc.* The extracts are used in the making of shampoo, lotion, cream, balm, and sunscreen. See page 1, Column 1, second paragraph; and examples. Sceopul also teaches that the extract comprises caffeic acid (a coffee acid considered in the art as a double salt of caffeine) and cafetannic acid (a coffee polyphenols, also known in the art as chlorogenic acid). The Sceopul' patent provides information associated with the compositions that the compositions protect the skin and hair from extraneous influences, and exhibit astringent, vasomotive, tonifying effect on cutaneous tissue and moisturizing activity on skin and moisturizing and protective effect of keratin of the hair. The Sceopul' patent provides information associated with the compositions that the compositions protect the skin and hair from extraneous influences, and exhibit astringent, vasomotive, tonifying effect on cutaneous tissue and moisturizing activity on skin and moisturizing and protective effect of keratin of the hair.

The teachings of Sceopul are set forth above. While Sceopul teaches that the chemicals comprising an alcohol extract of green coffee cherries; and, while Sceopul teaches cosmetic compositions comprising whole extracts of coffee cherries, Sceopul does not specifically teach using an aqueous or alcohol solvent in the making of the whole coffee cherry extracts for use in providing the reference composition. Thus, Sceopul teaches a step of providing the instantly claimed cosmetic except for wherein

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the cosmetic composition is prepared from primarily red or almost red dried coffee cherries; and, except for wherein the *Coffea spec.* (coffee) cherry whole extract is at least one of an aqueous extract and an alcohol extract. However, it would have been obvious to one of ordinary skill in the art to replace the sub-ripe cherry used in the method of providing the composition taught by Sceopul with a primarily red or almost ripe quick-dried coffee having the claim-designated level of mycotoxins and to use at least one of an aqueous or alcohol as a solvent to provide the claimed cosmetic composition because at the time of the invention it was known in the art that aqueous or alcohol extracts of quick-dried primarily red or almost ripe coffee cherries contain higher amounts of therapeutic phytochemicals, when compared to sub-ripe coffee cherries; and, that quick-drying of coffee cherries was useful in lowering suspected levels of mycotoxin in coffee fruit known to be harmful to the health of humans and animals. Firstly, Suzuki (V) teaches a method of extracting caffeine, theobromine and theophylline from quick-dried coffee cherries (*Coffea arabica*). For example, on page 67 under "2.1 Harvesting fruits", Suzuki teaches (V), "Fruits were detached at various stages ranging from 10 days after petal all to maturity (about 8 months) dried at 100°C for 1.5 h and then at 80°C for 6h, and placed in a desiccator overnight. Suzuki further teaches extracting the quick-dried coffee cherries using water as a solvent and chloroform as solvents and analyzing the contents of the extract (containing caffeine, theobromine and theophylline). In Table 1, Suzuki (W) shows that appreciable levels of caffeine (7500 $\mu\text{g g}^{-1}$ dry wt.), theobromine (59 $\mu\text{g g}^{-1}$ dry wt.) and theophylline (28 $\mu\text{g g}^{-1}$ dry wt.) were observed in coffee fruits (yellow-red coffee cherry) at 5-6 months of bean

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growth maturity, while at 4 months (green coffee cherry) only caffeine ($7900 \mu\text{g g}^{-1}$ dry wt.) and theobromine ($55 \mu\text{g g}^{-1}$ dry wt.), while decreasing levels of caffeine were observed in coffee fruits at 7-8 months of bean growth maturity. In another instance, Suzuki (X) shows the distribution of caffeine, theobromine and theophylline between seed and pericarp of *Coffea arabica* fruits at different stages of development. See Table 3. Suzuki teaches, "The pattern of growth of the *Coffea arabica* fruit was almost identical to that previously reported [completed citation omitted; Suzuki and Waller, 1984a). Table 3 shows the distribution of caffeine, theobromine and theophylline, between pericarp and seed of *Coffea arabica* fruits. Caffeine and theobromine were found in both seed and pericarp but theophylline in the pericarp of the ripened (red) fruits only." Thus, Suzuki shows that lower amounts of caffeine, theobromine and theophylline are present in the pericarp and seeds of immature green fruits of *Coffea arabica* with increasing amounts of the alkaloid compounds are observed in the plant materials as it ripens to a red color. The amounts of the compounds drastically decreased as the color changed to black in the latter stages of fruit maturation. In another example, Clifford reports the findings of a study assessing the change, with coffee fruit maturity, in the content of chlorogenic acids, caffeine and trigonelline in freeze-dried coffee beans of four different *Coffea sp.* Clifford uses water as solvent to extract the compounds from the coffee cherry portion. As illustrated in Figures 2A-D, the most striking change for each type of bean was the pronounced sigmoidal increase in the total accumulation of caffeoylquinic acid in parallel with the total dry matter gain, and representing between 5% and 12% thereof, whereas there was a linear increase of

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caffeine and trigonelline on a mass per 100 bean basis. Secondly, Fischer teaches harvesting coffee cherries (*Coffea Arabica*) at full maturity and extracting the beans with water or alcohol to obtain extracts comprising fucose, rhamnose, arabinose, galactose, glucose, xylose, and mannose (55.8%) in Table 1, and galactomannan (see Table 4).

In another instance, Coleman teaches water and ethanol extracts of crude coffee cherry mucilage from ripe coffee cherries comprise galacturonic acid fraction comprising arabinose, galactose, xylose and rhamnose. Since the primarily red or almost ripe quick-dried aqueous or alcohol extracts of Suzuki (V or W) and Clifford yielded high amounts of caffetannic acids, caffeine, chlorogenic acid, as well as trigonelline taught by Stuckler as being useful in the making of cosmetics (e.g., lotions or shampoos) for nail, skin and hair care and for reducing hair loss and for stimulating hair growth; and, caffeine, theophylline and theobromine taught by Pugliese as being useful in the making of cosmetic compositions for reducing human cellulite and reduction of other fatty tissues, one of ordinary skill in the art would have had a reasonable expectation of success to replace the sub-ripe coffee cherries comprising the Sceopul' cosmetic composition with the claim-designated coffee cherry extracts to provide a step of providing the claim-designated composition because to do so would provide for the making of a cosmetic composition having increased amounts of caffeine, caffeic acids, and chlorogenic taught by Sceopul as having therapeutic cosmetic effects; as, well as additional phytochemicals, specifically trigonelline, xanthines, known in the art to be beneficial in the making of cosmetics made evident by the teachings of Stuckler and Pugliese. This reasonable expectation of success would have motivated the artisan of

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ordinary skill to modify the method of providing a cosmetic composition taught by Sceopul because to so do would provide for the making of a cosmetic composition having broader therapeutic effect.

The combined teachings of Sceopul, Suzuki (V or W) and Clifford are set forth above. While the combined teachings of the references teach a step of providing a cosmetic formulation and information that the formulation comprises a *Coffee spec.* (whole) extract of primarily red or almost ripe dried coffee cherries, the combined teachings of the references do not specifically teach a method of marketing the reference composition *per se*. For instance, according to The Free Dictionary by Farlex the concept of marketing a product generally entails the following aspects:

“The activities of a company associated with buying and selling a product or service. It includes advertising, selling and delivering products to people. People who work in marketing departments of companies try to get the attention of target audiences by using slogans, packaging design, celebrity endorsements and general media exposure. The four 'Ps' of marketing are product, place, price and promotion. Notes: Many people believe that marketing is just about advertising or sales. However, marketing is everything a company does to acquire customers and maintain a relationship with them. Even the small tasks like writing thank-you letters, playing golf with a prospective client, returning calls promptly and meeting with a past client for coffee can be thought of as marketing. The ultimate goal of marketing is to match a company's products and services to the people who need and want them, thereby ensure profitability”.

Nonetheless, given the combined teachings of the references, the instantly claimed method would have been *prima facie* obvious because a method of marketing a cosmetic composition wherein the information about the cosmetic product is printed on at least one of a container containing the formulation and a package containing the

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container would have been well within the purview of one ordinary skill in the art at the time the invention was made. One of ordinary skill in the art would have been motivated and one would have had a reasonable expectation of success to augment the teachings of the combined references to provide the instantly claimed method of marketing a cosmetic comprising whole extract of primarily red or almost ripe dried coffee cherries, such as the cosmetic formulations taught by the combined teachings of Sceopul, Suzuki (V or W) and Clifford, because the combined references teach all of the requisite steps for providing a cosmetic formulation comprising a whole extract of primarily red or almost ripe dried coffee cherries; and, the teachings of Sceopul provide detailed information heralding the beneficial functional activities of the cosmetic compositions comprising coffee polyphenols, caffeic acids, chlorogenic acid and caffeine upon application, as well as all of the ingredients and amounts of ingredients used in the making of the reference formulations; Stuckler teaches that trigonelline is being useful in the making of cosmetics (e.g., lotions or shampoos) for nail, skin and hair care and for reducing hair loss and for stimulating hair growth; Pugliese teaches that caffeine, theophylline and theobromine are useful in the making of cosmetic compositions for reducing human cellulite and reduction of other fatty tissues. . Therefore, the claimed method of marketing a cosmetic formulation would have been no more than a matter of routine optimization to provide a result effect variable for the commercialization of the cosmetics taught by the combined teachings of the references containing coffee phytochemicals known in the art at the time the invention was made for their beneficial health promoting effects on the skin and the hair. Furthermore, common sense would

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have dictated and rendered the claimed method of marketing *prima facie* obvious to one of ordinary skill in the art because at the time the invention was old and conventional in the art of marketing a cosmetic to place printed material on a container detailing information about the cosmetic, as well as on the packaging the container, was beneficial in providing a vehicle for containing the product and a viable means for the mass distribution, delivery and storage of the product wherein the printed information on the container provides a means for the identification, promotion and sale of a product to a consumer base in want or need of a cosmetic product having beneficial functional effects.

Accordingly, the claimed invention was *prima facie* obvious to one of ordinary skill in the art at the time the invention was made, especially in the absence of evidence to the contrary.

No claims are allowed.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MICHELE FLOOD whose telephone number is (571)272-0964. The examiner can normally be reached on 7:00 am - 3:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terry McKelvey can be reached on 571-272-0775. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Michele Flood
Primary Examiner
Art Unit 1655

MCF
January 30, 2011

/Michele Flood/
Primary Examiner, Art Unit 1655